

# The Environmental Cooperation Pilot Program: 2001 Progress Report

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### This Report Compiled By:

Wisconsin Department of Natural Resources  
Bureau of Cooperative Environmental Assistance  
101 S. Webster, PO Box 7921, Madison, WI 53707  
Phone: 608/267-9700, Fax: 608/267-0560  
E-mail: [CEA@dnr.state.wi.us](mailto:CEA@dnr.state.wi.us)  
Web site: <http://dnr.wi.gov/org/caer/cea/ecpp/>

### Cooperative Agreement Advisory Group members:

Brian Borofka, Wisconsin Electric Power Company  
Michael Gromacki, Cook Composites & Polymers Co.  
Marilou Martin, US Environmental Protection Agency  
Randy Nedrelo, Northern Engraving Corporation  
Dianne Miller, International Truck and Engine  
Michael Ricciardi, Madison Gas and Electric  
John Piotrowski, Packaging Corporation of America  
Caryl Terrell, Sierra Club, John Muir Chapter  
Liz Wessel, Environmental Consultant

*The Wisconsin Department of Natural Resources  
appreciates the involvement of the current Cooperative  
Agreement Advisory Group members.*



## TABLE OF CONTENTS

### Executive Summary

- I. Introduction to the Environmental Cooperation Pilot Program
- II. Current Status
  - A. Applications to the Program
  - B. Status of Agreement Negotiations
  - C. Recruitment Efforts
  - D. Public Information Process
  - E. Interested Persons Group
  - F. Cooperative Agreement Advisory Group
  - G. USEPA Collaboration
  - H. Impacts to the Natural, Social and Economic Environments
  - I. Program Challenges
  - J. Recommendations to the Legislature
- III. Appendixes
  - A. [Program Performance Measures Table](#)
  - B. [Northern Engraving Emissions Graph](#)
  - C. [October 1, 2001 Report to the Legislature: ECPP Recommendations](#)

## Executive Summary

The Environmental Cooperation Pilot Program\* (the "Program") is a Wisconsin initiative that tests innovative approaches to environmental regulation. These new approaches seek to significantly enhance a company's environmental performance while at the same time reducing those administrative burdens associated with environmental regulation. This cooperative strategy, it is hoped, will act as a catalyst for more sustained and effective investment in environmental performance.

A brief survey of the Program's first four years shows that a number of key policy benchmarks have already been met. In 1997, the Environmental Cooperation Pilot Program law (s. 299.80 Wis. State Statutes) was passed allowing the Department to pursue up to ten cooperative agreements with individual facilities. In January of 1998, Governor Thompson sent a letter to 400 Wisconsin businesses inviting them to participate in the Program. In March of 1999 the Department became the first agency of its kind in the country to enter into a formal Memorandum of Agreement with the US Environmental Protection Agency regarding the pursuit of innovative environmental regulatory initiatives.

In February of 2001, Wisconsin Electric Power Company's (WEPCO) Pleasant Prairie Power Plant signed the first Cooperative Agreement with the Department. In October of 2001, Cook Composites and Polymers (CCP) of Saukville became the second company to sign an Agreement. It is clear that other participating facilities are likely to sign agreements soon.

Now in its fourth year of existence, the Program has reached a level of maturity and effectiveness that is fostering real environmental gains for its participants. Program accomplishments include:

1. Developed and implemented innovative and active stakeholder involvement programs at all participating facilities. We have learned a great deal from this process.
2. Started the process of recovering coal ash from landfills for use as a fuel.
3. Used expedited permitting to accomplish coal ash recovery and closure of a hazardous waste incinerator.
4. Seen significant reductions in pollutants as a result of environmental management system development.
5. Greatly improved data capture to measure these reductions.
6. Greatly improved facility environmental performance reporting to the Department as never before.

The primary challenge to the Program has been finding the legal foundation and legal protections for granting the flexibilities sought by companies while continuing to work within a traditionally prescriptive regulatory system. Through this Program we are seeking to foster more adaptive mechanisms within government regulatory frameworks, and within business culture.

Other challenges have been in providing an adequate measure of assurance that a facility's involvement in the Program will achieve superior environmental outcomes, and that the negotiation process will proceed smoothly. While the process is improving, the transaction costs associated with Agreement negotiations have been high on both sides.

Lastly, it has been an ongoing, albeit fruitful challenge, to manage the Interested Persons process. In some instances the process goes ahead smoothly, while in others, it becomes unduly protracted.

Time is a factor in all of the issues referenced above. As the Department moves out of its research and development phase into process management, we must be much more cognizant of the time frames involved, and how those time frames affect the success of the Program.

Another emerging regulatory initiative in Wisconsin called Green Tier is developing on a parallel track, and stands to benefit greatly from the lessons learned in the Pilot Program. Green Tier envisions the use of

innovative regulatory tools complementary to those in the Pilot Program that assist companies in achieving cost-effective and superior environmental performance.

The Green Tier Advisory Committee has conferred on a regular basis with the Pilot Program leadership and staff in order to refine its direction and scope. As a result of this collaboration, both programs will no doubt function cooperatively in providing superior-performing Wisconsin companies the appropriate regulatory relief they deserve. For more information about Green Tier, see this website:  
<http://dnr.wi.gov/org/caer/cea/environmental/index.htm>.

Wisconsin industry has stated quite clearly its need for significant changes in Department regulatory procedures. The Environmental Cooperation Pilot Program is demonstrating that it is the best departmental model yet for affecting such change.

***\*The Environmental Cooperation Pilot Program began in 1997 and sunsets in October of 2002.***

## **I. Introduction to the Environmental Cooperation Pilot Program**

Section 299.80 of the Wisconsin State Statutes authorizes the Environmental Cooperation Pilot Program (the "Program") and also requires an annual progress report. This report will describe activities undertaken as part of the Program during the period from November 2000 through October 2001. This is the fourth-annual progress report in the series.

Governor Thompson introduced the Program as part of the 1997-1999 Biennial Budget. It is designed to evaluate innovative environmental regulatory methods. The Program began in 1998, and for a five year period, ending in 2002, authorizes the Department to enter into up to ten Agreements with persons who own or operate facilities required by law to be covered by licenses or permits. An environmental management system based on the ISO 14001 standard (or equivalent) forms the basis for whole-facility regulation.

The intent of Agreements is to establish superior environmental performance (see Program Performance Measures Table in Appendix A) and reduce administrative burdens by reducing administrative requirements of permits and streamlining approvals specified in the Agreement. Agreements are designed to promote the reduction of overall levels of pollution through this more flexible approach.

Agreements include: a commitment to superior environmental performance; an environmental management system; specific waste reduction goals; any approvals replaced by the Agreement; any operational flexibility and variances granted; a commitment to release periodic performance evaluations; and a plan for public participation. Both regulated and non-regulated environmental impacts can be included in the Agreement.

## **II. Current Status**

### **A. Applications to the Program**

Wisconsin Electric Power Company was the first to sign an Agreement in February of 2001. In addition, they recently submitted another application that is unrelated to the Agreement already signed. Cook Composites & Polymers became the second to sign in October, 2001. Four additional companies are still actively pursuing an Agreement under the Program. One of these facilities has already entered the formal negotiation stage. Participants with formal applications under review include:

- **Madison Gas and Electric (MGE)** - an electric and natural gas utility in Madison

- **Northern Engraving Corporation (NEC)** - surface coating facilities in Sparta, Holmen, Galesville, West Salem and La Crosse.
- **Packaging Corporation of America (PCA)** - a paper mill in Tomahawk
- **International Truck and Engine\*** - an engine manufacturer in Waukesha
- **Wisconsin Electric Power Company (WEPCO)** - an electric utility with headquarters in Milwaukee and power plants in numerous locations

*\*Formerly Navistar International Transportation Corporation*

## 1. Examples of Flexibility Requests

Requests made by companies include:

- Reduced sampling frequency for wastewater discharges;
- Electronic reporting of wastewater data;
- Removal of requirements to monitor for pollutants not in the system based upon previous analyses;
- Reduced air pollution monitoring or reporting;
- One-stop permitting with one individual contact from the Department;
- Reduced inspections as a result of implementation of an ISO 14001 environmental management system;
- Single permit to cover a facility with a single, simplified reporting form;
- Facility-wide permit cap;
- Streamlined approval for beneficial reuse of waste products;
- Waiver from Federal MACT standard in exchange for superior environmental performance;
- Permit waiver for innovative pollution control testing and evaluation and,
- Extension of an effective permit period in order to allow for evaluation
- And potential implementation of an alternate pollution prevention technology.

## 2. Flexibilities/Benefits/Incentives granted (WEPCO and CCP)

1. Incentives and Benefits
  - Coordinated, expedited review of multiple environmental approvals for projects called for under the Agreement that involve wastewater pretreatment, waste management and air quality
2. Air Pollution Requirements:
  - Limited exemption from construction permit requirements (for very small projects)
  - Faster process for receiving testing/research permit exemptions
  - Ability to commence construction (but not operation) of minor sources without a permit
  - Faster schedule for operation permit revisions
  - Reduced monitoring, record keeping, and reporting
3. Wastewater Requirements:
  - Reclassification of site for coverage under less onerous stormwater permit
  - Reduced discharge monitoring report frequencies
4. Solid Waste Requirements:
  - Streamlined landfill plan modifications
  - Ability to beneficially reuse landfilled coal ash
  - Expanded reuse opportunities for industrial wastes and streamlined process
  - Delay in requiring hazardous waste stack testing until a waste minimization project to eliminate hazardous waste burning could be evaluated and implemented.

## 3. Negotiating an Agreement

The stages in the development of any specific Agreement are summarized below, and are accompanied by the approximate time for the completion of each phase. The "\*" represents a Departmental decision point in the process.

Phase 1 - "Pre-Application Phase":

1. Recruit
2. Receive the Letter of Intent
3. Review and respond to the Letter of Intent
4. \* (i.e., whether to encourage/discourage a full application)

Phase 2 - "Application Phase":

1. Receipt of Application
2. \* [i.e., application complete or not? (from an administrative, not content perspective)]
3. Notification Process (i.e., notify USEPA, Department Programs, Regional staff, and post on web site)
4. Feasibility review
5. Submit facility multi-media files to USEPA
6. Dialog with USEPA (via conference call, or other) to identify major impediments
7. Engage Interested Parties (here we would adjust the schedule and plan in each case based on the company's proposal for stakeholder involvement.)

Phase 3 - "Counterproposal" or "Pre-negotiation":

1. Assemble Department Review Team (Regional, Service Center, and Bureau)
2. General staff education on the Program and distribution of educational materials
3. Gathering content for counterproposal
4. Write the Counterproposal
5. \* Review of Counterproposal by all parties (USEPA, Department, and facility) [i.e., can everyone accept the draft counterproposal as a reasonable starting point for negotiations?]
6. Prepare the Public Notice of Intent to Negotiate (including posting of the Counterproposal) in accordance with the Communication Plan (also include the Interested Parties in this step). Note: USEPA's 90-day time clock commences - see MOA.

Phase 4 - "Negotiation":

1. Formulation of negotiation strategy by Project Manager (i.e., who, when, what, how to manage dialogue, etc.)
2. Manage the USEPA feedback within the 90-day period
3. Secure USEPA commitment for counterproposal provisions
4. Secure Department commitment for counterproposal provisions
5. Craft the Draft Proposals and evaluate the conduct and progress of negotiations
6. \* Produce the Final Draft (i.e., this is a decision point because you only move forward if all parties are in agreement.)

Phase 5 - "Public Comment":

1. Develop Fact Sheet
2. Issue Public Notice (per communication plan - include Interested Parties in process) and await the 30-day public comment period
3. \* Convene public meeting (or hearing) if necessary
4. Evaluate and respond to public comments

5. Amend Agreement where necessary
6. Sign Agreement and make signing arrangements per communication plan

Phase 6 - "Implementation of Agreement":

## **B. Status of Agreement Negotiations**

### **Wisconsin Electric Power Company/Pleasant Prairie Power Plant (WEPCO):**

A final Cooperative Agreement between the Department and WEPCO was signed on February 5, 2001. This came after lengthy negotiations last fall, an uneventful 30-day public comment period, and a modestly attended public hearing. The centerpiece of the agreement is WEPCO's plan to remove ash from company landfills, blend it with coal, and burn it at Pleasant Prairie Power Plant as a fuel -- without relaxing any environmental standards. Other highlights of the agreement include WEPCO's commitment to mercury emissions research, and the Department's commitments to expedite the review of permit revisions. For complete details, refer to the Department's cooperative agreement web pages at <http://dnr.wi.gov/org/caer/ecpp/index.htm>.

Since February, the employees of Pleasant Prairie Power Plant have formed a Cooperative Agreement Systems Team that will design and implement the EMS and ensure that commitments in the Agreement are met. An internal auditor has completed a top-to-bottom environmental compliance review, and the results are summarized in a baseline performance evaluation that was mailed to the Department on August 1. There have also been two meetings of the interested persons group since February.

Finally, one technical detail is also worth noting: USEPA is in the process of publishing in the Federal Register its decision to approve changes to Wisconsin's State Implementation Plan for air quality. These source-specific changes only apply to Pleasant Prairie Power Plant. They are necessary to ensure that the Agreement is consistent with the State Implementation Plan and thus with federal law.

### **Cook Composites and Polymers Co., Saukville Facility (CCP):**

CCP, an Ozaukee County polyester and alkyd resins manufacturer located 25 miles north of Milwaukee signed an Agreement October 1, 2001 with the Department. The Agreement enables the company to reduce pollution and pursue other environmental improvements beyond those that existing regulations require. In addition, CCP benefits from the Agreement by receiving a coordinated and expedited regulatory review of their project.

There was considerable public interest in this Agreement. In March of this year the Department public noticed the Draft Agreement and scheduled a public informational meeting during the 30-day public comment period. Approximately 30 people attended the March 22, 2001 public meeting, 4 people submitted letters and 55 submitted postcards on the agreement. Citizens had many questions and concerns when this Agreement was initially proposed. Local concerns included odors, adequacy of regulatory review of CCP's proposed projects, and the public participation process. A number of people expressed confusion at the public meeting about what the project was that CCP was undertaking and how the Environmental Cooperative Agreement affected the project.

Between March and the end of May, the comments were compiled, analyzed and reviewed with representatives of Cook, USEPA and Department program technical staff. Alternatives and agreement provisions, responsive to the public comments, were developed and discussed with the interested persons group at the end of May and again in August. The Department and CCP jointly developed specific changes in the Agreement to clarify the Agreement and respond to comments and citizen concerns. Throughout the process Agreement provisions and responses to the public comments were developed and shared between the USEPA and the Department to assure that the legal requirements were met and that general environmental concerns were addressed.

The Department and CCP decided that the Agreement should proceed based on the provisions that have been developed, the mutual adjustments that have been made, and the understanding that has developed as we have worked on this Agreement.

*"We believe the Cooperative Agreement has been a tremendous growth opportunity for CCP, the DNR and our neighbors in Saukville to work toward environmental improvement as a team effort. We believe that all parties involved now have a better understanding of each other, and the environmental aspects of our operation than when we started, and we expect this growth to continue."*

Michael Gromacki, CCP Director of Quality, Safety and Environment

*"CCP considers the signing of this agreement as the beginning, not the endpoint, of a fresh approach to environmental management as a continuous improvement process, with a foundation built on community and employee involvement. Through this process, CCP welcomes constructive ideas from our employees and our Saukville neighbors to improve our operations and minimize our impact on the environment. As a result, we have already discovered new ideas and opportunities for improving our environmental performance and reducing waste."*

Michael Lotman, CCP Director of Polymer Manufacturing

#### **Madison Gas and Electric/Blount Generating Station (MGE):**

MGE submitted a formal application to the program in September of 2000. A key point of interest in the application is the company's desire to increase the use of alternative fuels while adhering to all environmental standards. The company is also interested in reducing the amount of mercury waste potentially released to the environment. But the highlight of this application might be the model effort MGE is making at involving interested persons. They have a very informed and active stakeholder group that has met on seven separate occasions for a total of more than 20 hours.

The Department released a counterproposal to the MGE application on July 24, 2001. The counterproposal addresses issues and ideas from the original application, but is supplemented by new issues and ideas raised by the interested persons group and by Department staff. The Department and MGE are now in the midst of negotiations. We hope to resolve all issues by the end of this year.

#### **Northern Engraving Corporation (NEC):**

The NEC Agreement has been making steady progress toward completion. Since June, 2000, an Air Management engineer was assigned to NEC to rewrite permits tailored to the Agreement. Since that time, the permit rewrite is nearly complete and obstacles in negotiations have been overcome to the extent that a signed Agreement in the near future is very likely.

#### **Packaging Corporation of America (PCA):**

In 1999 the Department approached PCA to explain the Environmental Cooperation Pilot Program. Given PCA's exemplary environmental performance as well as their positive community involvement, the Department felt they would be a fine candidate for the program. After reviewing the program documentation and recognizing the potential benefits, PCA also felt that there was merit in them pursuing an Agreement and submitted an initial proposal to the Department.

The Department evaluated the submittal and verified its environmental merit. It was determined that PCA's proposal to hard pipe the condensates directly to their wastewater treatment plant for biodegradation in lieu of

incineration would provide a viable alternative to their current practices. It was also recognized that the type of flexibility that was needed required USEPA involvement. USEPA was brought into the discussions to determine if they would be in agreement with the change in the process. The USEPA decided a pilot test would be required to verify the procedure. During that process and to this date the Department has continued to formulate a counter proposal to PCA's initial submittal.

#### **International Truck and Engine:**

Several changes in management at the company have occurred over the last 18 months and Department staff are working with the company as well as examining general air issues internally to assess the viability of further discussions/negotiations for a cooperative agreement.

#### **Wisconsin Electric Power Company/System:**

Shortly before publication of this report, WEPCO submitted a new application to the program that is different in scope and in issues addressed than the Agreement for Pleasant Prairie Power Plant that was already signed. This new application includes a proposal for an integrated air quality strategy that would apply across the board to WEPCO's fleet of coal-fired power plants in Wisconsin. The Department is just beginning to review the application.

### **C. Recruitment Efforts**

Over the last 4 years, a number of recruitment efforts were undertaken to find candidates for the Program. These efforts will continue unabated as we near the pilot's fifth and final year.

Since the Program's inception, environmental management systems have been embraced by an increasing number of Wisconsin businesses. Consequently we are actively pursuing companies that are already ISO 14001 certified, or who are implementing EMS strategies.

The following is a synopsis of past and current recruitment efforts:

- Working with Department program staff and supervisors in the Regions and the Bureaus to identify potential candidates,
- Working with local media and producing articles explaining benefits of the program,
- Contacting local Chambers of Commerce and economic development organizations,
- Partnering with University of Wisconsin Extension Pollution Prevention staff to identify potential candidates for the Program,
- Re-approaching facilities who had declined participation in past years,
- Working with trade groups and business consortiums in several business sectors to gain support,
- Collaborating with current Program participants in developing recruitment informational packets highlighting the benefits of the Program,
- Working with Wisconsin Manufacturers and Commerce in disseminating Program information to their members,
- Working with Department of Commerce staff to identify potential candidates,
- Reviewing Department enforcement records to identify facilities that could benefit from the Program, and
- Reaching out to environmental consultants for their support in identifying candidates.

### **D. Public Information Process**

The Department anticipates that this innovative Program will increase the public understanding, involvement, and confidence in the environmental decisions that affect their communities. Significant strides continue to be



made with stakeholder involvement. The Program is intended to be transparent on several levels. First, a Cooperative Agreement Advisory Group with representatives from participating facilities, environmental organizations, Wisconsin Manufacturers and Commerce, USEPA, Wisconsin Department of Commerce, and the Department, is evaluating the Program's overall performance (Section F).

Second, there is a detailed public information process that the Department is required to follow as it pursues Agreements with pilot facilities. Under this process, all Agreements entered into, Draft Agreements, letters of intent and documents received by the Department as part of the Program are subject to public review. The Department's website is the primary mechanism for distributing this information to the public. Documents relating to the Program can be accessed at the following address: <http://dnr.wi.gov/org/caer/cea/ecpp/index.htm>. This web page received 2058 hits between November 1, 2000 and August 31, 2001, an increase of about 23% over the same period a year ago.

In addition to the information on the web, the Department publishes a public notice when negotiations start with a company, an Agreement is ready to sign, and anytime there is an amendment to or revocation of an Agreement. The Department will provide at least 30 days for public comment on any proposed issuance, amendment or revocation of an Agreement and will offer the opportunity for the public to request a public informational meeting or contested case hearing as provided in s. 299.80, Wis. Stats.

Third, participating companies are required to organize an interested persons group which provides input on the company's EMS and reviews the company's performance under the Agreement. As the individual pilots explore how they will build the public's confidence through their interested persons group, the Department plans to evaluate the success of the public outreach efforts through focus groups and in consultation with the Advisory Group. Thus far participating companies are taking slightly different approaches with their interested persons groups. Some applicants are working through issues that may or may not prove to be roadblocks prior to involving a public interest group. Others are starting their public interest groups at the onset. We are still working to expand interest at the community and non-governmental organization levels to more effectively deal with Agreement-related issues.

## **E. Interested Persons Groups**

Each applicant to the Program must submit a description of the process they will use to establish an interested persons group which includes residents of the area in which the facility proposed to be covered by the Agreement is located. The following describes efforts made by participants in establishing and fostering their respective interested persons groups.

### **Wisconsin Electric Power Company (WEPCO):**

WEPCO contacted the following groups to seek out potential interested persons for the Pleasant Prairie Power Plant Agreement: employees of Wisconsin Electric; residents of the community; community leaders/elected officials; local community organizations; local and statewide environmental organizations; local companies; Department staff or other agencies; suppliers; persons previously interested or involved in the plant's activities; and, media. WEPCO's application included the list of specific groups that were invited to participate. WEPCO expects the list of individuals representing the various groups to be dynamic.

WEPCO hosted an open house, plant tour and informational meeting on August 2, 2000. Members of the interested persons group received written invitations. In addition, a letter to the community including an open invitation to the public was published as a quarter-page advertisement in the local newspaper.

In addition to working with a formal interested persons group, WEPCO has taken numerous steps to more broadly involve stakeholders in their Pleasant Prairie pilot project, including but not limited to the following: announcements and updates in employee newsletters; postings on their Internet web site; personal contacts of

local officials to solicit their feedback; in-person meetings with statewide environmental group representatives (Sierra Club, Renew Wisconsin, and Citizens for a Better Environment), as well as frequent phone conversations, e-mails and informal face-to-face discussions; press releases; and, presentations at state and national conferences.

Since signing the Cooperative Agreement on February 5, 2001, WEPCO hosted two meetings of their Community Advisory Committee and sent one informational mailing to a broader group of interested persons. The company also hosted a tour of Pleasant Prairie Power Plant by the Natural Resources Board and Department managers. In addition, they developed several publicly-available fact sheets describing power plant operations, the Cooperative Agreement, and specific environmental initiatives they are undertaking (e.g., mercury emission control testing).

Information regarding interested person involvement for WEPCO's second application to the program had not been reviewed by Department staff at the time of publication of this report.

#### **Cook Composites and Polymers Co. (CCP):**

In summer 2000, Cook Composites and Polymers (CCP) held an initial public meeting on their project and hired a consultant to develop an outreach program and an interested parties group. The outreach program further enhances preexisting community involvement. CCP's consultant initially designed and distributed a community survey to help provide baseline information. CCP then organized a Community Advisory Committee including neighbors, area businesses, employees, local elected and appointed officials, Department staff, Local Emergency Planning Committee, Fire Department, citizen groups, neighborhood associations and others in the greater Saukville area. The committee has quarterly meetings that are open to the public. CCP updates participants on new CCP projects, regulatory issues and environmental performance. In return, committee members share their ideas on how to improve CCP operations and community outreach.

In just its first two meetings, the Community Advisory Committee has provided valuable input by recommending:

- Recruitment of more plant neighbors to the committee.
- Improvements to CCP's environmental outreach plan.
- CCP establish a "repository" at the library for information relating to the Agreement with the Department and the community advisory committee.
- Advisory committee meetings are open to the public and announced in the newspaper.
- The Department hold an informational meeting along with the public hearing on the cooperative environmental agreement and that they get information out to people before any future meetings.
- Ideas for CCP chemical fact sheets and newsletter topics.

At its May meeting, the committee discussed how CCP, the committee and the community can further resolve odor issues which were identified as a major concern at the Agreement's public meeting. Committee members who are plant neighbors indicated that problem odors occur infrequently and are not as bad as they used to be. CCP indicated that its goal is zero odor complaints. The committee discussed the idea of seeking volunteers to keep detailed logs relating to odors they experience, communicating immediately with plant personnel and working together to try to identify the source of the odor and what can be done about it. CCP will present a more specific proposal on this to the committee.

#### **Madison Gas and Electric (MGE):**

MGE established an interested persons group called the MGE Community Environmental Advisory Group. MGE finalized its composition and confirmed each member prior to submitting their application for the Program on September 7, 2000. The group met for the first time on September 27, 2000 and has since met an

additional 6 times for a total of more than 20 hours. Meetings are held in the evening for the convenience of the interested persons. MGE hosts the meetings and provides supper.

Input from the Community Environmental Advisory Group helped shape the Department's counterproposal to the MGE cooperative agreement application. With MGE's consent, the Department introduced a number of new items into the counterproposal that originated with the advisory group and reflects their particular interests. The group plans to continue meeting at least semi-annually and will be actively engaged in reviewing and commenting on any draft agreement that the Department and MGE are able to negotiate.

When selecting specific individuals for membership, MGE sought a broad diversity of perspectives such as: a) technical: familiar with environmental compliance; b) non-technical: not familiar with environmental compliance; c) male/female; d) various age groups; and, e) multicultural.

#### **Northern Engraving Corporation (NEC):**

On September 29, 2000, NEC submitted a draft plan for setting up their stakeholder group. NEC's staff identified the purpose of the group is to "provide a vehicle through which to communicate corporate environmental information and to receive input from local community, governmental, and business representatives". NEC will consider including Department employees, Union Stewards, Public Works officials, local business representatives, community environmental, conservation and outdoor groups, and a local representative from the community at large. On July 6, 2001, NEC notified the Department that they had selected members for their stakeholder group for the Sparta facility. Representatives are made up of Public Works Official, Natural Resources Conservation Service, Register of Deeds, University of LaCrosse Chemistry Department, NEC Management, and other small business representatives. Current discussions evolve around having one stakeholder group with community representatives from the three NEC facility areas.

#### **Packaging Corporation of America (PCA), and International Truck and Engine (International):**

These two companies have focused on specific feasibility issues with the Department and/or USEPA. Significant movement has been made in resolving the hurdles that have hindered the progression of these Agreements. With the progress that has been made, further work now needs to be completed on the formation of their interested persons groups. Both are in the process of identifying and contacting potential members. International has presented its proposal to the Waukesha Area Emergency Response Coordinators.

### **F. Cooperative Agreement Advisory Group**

The Cooperative Agreement Advisory Group consists of representatives from each of the participant pilot facilities, environmental organizations, Wisconsin Manufacturers and Commerce, the U.S. Environmental Protection Agency - Region V, and the Department of Commerce. It held its first meeting in August of 1999 and has met several times since then. The Groups' mission is to provide guidance to the Department on Program development issues. The Group met on September 12, 2001 to discuss the Program's progress to date, and to provide input to the Department as to the Program's future direction.

### **G. USEPA Collaboration**

The nature of the Program requires that the Department and USEPA - Region V work together. A Memorandum of Agreement (MOA) was signed on March 25, 1999, that defines roles and responsibilities of the Department and USEPA and outlines the process for review and issue resolution for the Program.

USEPA - Region V has set up a structure to carry out their part of the MOA. They designated a point of contact for the Department that serves as the coordinator for both the regional USEPA offices and for National Program Offices, and organizes the USEPA team for each of the Agreements. The coordinator serves to facilitate the

flow of information, to coordinate procedures with the Department, to schedule conference calls, and to ensure timely responses. USEPA formed teams for each Agreement, so that they would be ready to work with the Department when requested.

Despite the presence of an organized administrative structure, the communication and coordination on the part of both agencies has not always been smooth. Working through complex technical and legal issues has proven difficult. Slow response time is a common frustration among staff and applicants. Both agencies are working cooperatively to improve and, if necessary, modify procedures. The Department appreciates USEPA's involvement and support in Program implementation.

## **H. Impacts to the Natural, Social and Economic Environments**

The Program encourages companies to go beyond compliance and to demonstrate superior environmental performance. As such, these companies are expecting a number of outcomes through their participation in the Program.

Wisconsin Electric Power Company (WEPCO) is recovering ash from its landfills for beneficial reuse as a sand and gravel substitute, or as supplemental fuel to generate electricity at Pleasant Prairie Power Plant, and will be able to reduce its use of coal, and at the same time recover valuable landfill space. In time, it may be able to decommission its landfills altogether. It is also promoting improved environmental performance from its key suppliers through environmental auditing procedures. Mercury emission reduction technologies will also be evaluated and demonstrated under the Agreement for Pleasant Prairie. In WEPCO's second application for the Program, they project dramatic, system-wide reductions in air emissions.

Cook Composites and Polymers Co. (CCP) commitment to superior environmental performance includes no longer burning hazardous waste in their incinerator; reducing the amount of wastes generated and contaminants released, especially those with health and environmental concern; implementing an Environmental Management System; and, taking a leadership role in product stewardship.

As of October 1, 2001 CCP is making two big changes. First, it is not going to fuel their incinerator with hazardous waste solvents. The solvents will be shipped offsite for reclamation and reused rather than burned. Second, CCP is making the reaction water non-hazardous by installing new technology that will remove xylene and other solvents that make the wastewater an ignitable hazardous waste. CCP will also neutralize the reaction water using ammonium hydroxide so the reaction water is no longer an acid, and thus no longer a corrosive hazardous waste.

CCP employees have already identified how to reduce solvent use from 1.7 million pounds a year to less than 1.2 million pounds a year. CCP is making piping changes to achieve this initial reduction, which will save about \$80,000 in raw material costs. This is just one example of how participating in this Program and looking closely at operations can positively affect the bottom line.

Madison Gas and Electric (MGE) projects an increase in the use of waste materials to generate electricity, continued development of alternative energy production methods, a reduction in the amount of mercury potentially discharged to the environment, and a further reduction in the amount of waste generated or sent to landfills.

Northern Engraving Corporation (NEC), through its EMS, has already realized very significant reductions in VOCs and Hazardous Air Pollutants at its Gailsville Facility (see graph in Appendix B. Future projections include reduction in energy use, lower VOCs and Hazardous Air Pollutants, overall reduction in amount of waste materials generated, and a reduction in the amount of waste that is being sent off site at each of its facilities. It further projects that alternative methods of production, which have lesser impacts on the environment, will be developed through the Program.

In developing a strategy to comply with an USEPA MACT I requirement for semi-chemical mills, Packaging Corporation of America (PCA) not only evaluated their process, but also the regulatory intent. PCA determined that mere compliance with the rule would result in only a 10% destruction of plant hazardous air pollutants (HAP's). In contrast, by implementing an alternative technology, PCA could increase pollutant control by an order-of-magnitude. The alternative of collecting and treating foul condensates produced at the pulp mill's primary and secondary condensers would exceed the efficiency of adding a collection/incineration process. This alternative is something that few mills would be able to implement and realize such dramatic results. This technique is only applicable due to the nature of PCA's Tomahawk mill. If compliance with the MACT I rule was simply adhered to, 90% of the HAP's would be contained in the condensates, which are reused across the Mill, and cause fugitive emissions.

Perhaps more important than those positive impacts to the natural and economic environment that result from the above actions, are the potential social and community benefits that may occur due to a more environmentally aware workforce, higher ownership of environmental commitments by facility operators, and more knowledge and involvement by local communities where the facilities are located. An educated and engaged local citizenry may be more effective in prompting continual environmental performance improvements than can be realized by any action taken by the Department or the USEPA.

## **I. Program Challenges**

This Program identifies innovative regulatory tools and mechanisms essential to a) improving the Departments' overall effectiveness in protecting the environment, and b) reducing administrative burdens to businesses. In order to accomplish this, a number of Program challenges need to be addressed.

Department structural impediments to Program effectiveness include:

1. A dedicated multi-disciplinary Department team is not always available to address the regulatory flexibility needs of each participating facility.
2. Department regulatory staff are not always available as needed to consult on implementation elements of the Agreement in addition to regulatory support.
3. Response time from Department staff regarding Agreement issues continues to lag behind the needs of the facilities.
4. Reaching Department and USEPA consensus on particular requested flexibilities including "air bubble" permits continues to be a challenge.
5. Consensus on establishing and recognizing a baseline for the past environmental accomplishments of participants has been difficult to achieve.

Challenges faced by participating facilities include:

1. Establishment of an interested persons group prior to actual negotiations.
2. Having to go public on initial negotiations.
3. Limited resources available to the company for the establishment of an interested persons group.
4. Small business recruitment incentives are inadequate.
5. Participating facilities increased exposure leads to fear of additional surveillance/attention by federal government, inspectors, etc.
6. Interested Persons Group presents challenges to the facility in the form of vulnerability to public scrutiny.
7. There is a lack of guaranteed outcome for the facilities.

## **J. Recommendations to the Legislature**

The Department sent a full report regarding Program recommendations to the Wisconsin Legislature on October 1, 2001 (Appendix C). What follows is an abbreviated version of the report.

#### **Suggested extension of the Program**

The Department recommends that the end date of the Environmental Cooperation Pilot Program be extended through June 30, 2006 because the Program:

1. Is the only statutorily based tool to explore facility-wide approaches to innovation and to provide the legal basis and protection for exploration of flexibility in the administration of environmental regulations.
2. Is the only program that ties directly to the internationally recognized use of environmental management systems.
3. Provides the foundation for performance based approaches to environmental improvement.
4. Allows for regulatory differentiation between facilities based on the ability of those facilities to deliver sustained superior environmental performance.
5. Provides a legal framework for the consideration of a consolidated approach to air, water and waste impacts on the environment and the union of environmental protection and restoration.
6. Provides a framework for the active engagement of the public and the community in the development and delivery of improved environmental performance.
7. Provides legally binding agreement that includes "beyond compliance" elements to achieve environmental goals.
8. Allows companies to leverage the use of environmental management systems by defining environmental goals and influencing the regulatory framework that governs how those environmental goals are met.
9. Delivers real environmental improvement with the legal foundation to deliver that improvement over time.

The Agreements executed through the Program and the Agreements in the process of negotiation have provided the basis for exploration of new ways to enable the capacity of business. The law has provided ways to address environmental concerns and set the stage for environmental gains. That might not have been accomplished without the legal foundation provided in the law.

The Department further recommends removing the limitation of 10 pilots. We feel that only by removing this limitation can the Program acquire the experience and track record necessary to adequately address cost and time issues.

#### **Suggested statutory changes and a legislative package**

In the course of deliberations about the Program and the re-examination of its statutory requirements, several areas were identified where changes in the statutory language might increase its effectiveness and efficiency. Repeatedly the discussions focused on Program limitations due to a lack of resources; a challenge which requires legislative action. For both statutory modifications and additional resources a legislative package will need to be developed. We believe that package should be a part of the 2003-05 biennial budget package and separate from the changes cited above, which simply extend the current program provisions.

To develop the legislative package, we are suggesting that the specific provisions would be developed jointly with the business community, environmental groups, other agencies and community based organizations. There are three reasons for adopting this course. First, when the legislation was considered for enactment into law, the Department was criticized for not including a broad base of participants. This approach could address some of the concerns that were not addressed in the initial language. Second, we have realized significant gains in both trust and acceptance for legislation of this type when more people have been included and we have generally found that the overall quality of the legislative products has improved. We have seen this most recently in the development of Brownfields legislation and Wetlands legislation just to name two. We also believe that we now have enough information to engage effectively in the dialogue and there is an ever-increasing understanding of

environmental management systems that should provide richness to the debate. Third, this time frame will provide the opportunity to align with consideration of Green Tier, to make sure that the legislative package provisions are necessary and that changes complement legislative action on Green Tier.

The Department does have an existing group, the ECPP Advisory Group that could fulfill this role. While we intend to explore the specific statutory provisions with this group we would welcome suggestions from both the Governor's office and the Legislature for participants in the effort or suggestions for an approach that would be better suited to the legislative needs. Our intent is to have a legislative package completed by September 1, 2002.

To provide a framework for discussion of potential statutory changes, the Department, working in conjunction with the ECPP Advisory Group has identified the following areas that could produce Program improvements based on experience with the Program to date:

1. Allocate new staff to the Air, Waste, and Water programs to develop and deliver flexibility.
2. Provide specific small business resources to develop environmental management capacity and incentives to assure that those capabilities are applied to achieve superior environmental performance.
3. Amend statutory flexibility language to enable treatment of companies based more on environmental performance and commitment.
4. Develop new statutory language and legislative direction for administrative code for air, waste and water that authorizes and enables flexibility.
5. Amend statutory provisions for the formation of the Interested Persons Group to coincide with the start of actual negotiations and develop new language encouraging public participation and assessment of public interest prior to proposal development.
6. Separate statutory provisions relating to the Public Notice of Intent to Negotiate from the Announcement of a Counterproposal.
7. Clarify statutory language relating to the issuance of a variance to assure that flexibility determinations are based on performance.
8. Develop new statutory language to recognize the response process arising from Public Meetings and Public Comment Periods.
9. Amend statutory provisions relating to Amending Agreements and Revocation of Agreements so that facilities have due process protection that would enable them to withdraw from the program under adverse or unusual conditions.
10. Consider removing the requirement that all participants in ECPP pay the same fees as non-participants.
11. Consider a time-based "fee for service" system with participants.

The ECPP Advisory Group will be reconvening after January 2002 and this will be on the agenda for consideration by the group.

### **Suggested Administrative Changes**

As with the development of the legislative package, Department staff in consultation with the ECPP Advisory Group has identified several changes that can be made administratively to enhance the performance of the program and begin addressing the challenges that have been identified. Listed below are the changes that have been identified:

1. Improve levels of participation and program visibility/viability by engaging the EPA, legislative branch, and executive branch. Improve the overall working relationship with other agencies (state and federal), the Environmental Commission of the States, community groups and environmental groups.
2. Clarify and better coordinate institutional processes within the Department.
3. Provide a more concrete institutional framework to identify and resolve air, waste and/or water issues that affect more than one of those media.

4. Capitalize on the air, waste and water program expertise developed through the ECPP program to improve overall service to facilities participating in the program.
5. Provide resources to facilities to develop their capacity to create and support an Interested Persons Group.
6. Encourage public involvement in the Pre-Application phase to enhance and expedite the consideration of agreement provisions.
7. Create an administrative option for addressing specific neighbor-related issues unrelated to the agreement through a process separate from the negotiation process.
8. Identify objective measurements that can be used to track program performance (cost of establishing agreements, time to complete development phases for agreements, etc.).
9. Provide clear estimates of the time lines to develop the agreement and a clear set of expectations for the respective parties engaged in developing the agreement based on the program analysis that has been done.
10. Track and report environmental results from the program.
11. Convert lessons learned through ECPP into consistent regulatory innovation throughout the Department.

### **Conclusion**

The Agreements that have been finalized have demonstrated environmental benefits and considerably more potential for environmental benefit. Much of the needed improvement in the Program can be accomplished through administrative change that has started in earnest in the last 6 months with the completion of a process analysis. To complete the work of the pilot, the Department is requesting that the Program be extended to June 30, 2006 and that the limitation to 10 pilot sites be removed. To assure that the statutory provisions and staffing needs are fairly examined a broad-based group of internal staff and external stakeholders will make recommendations for the 2003-05 budget.

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## **III. Appendixes**

- A. [Program Performance Measures Table](#)
- B. [Northern Engraving Emissions Graph](#)
- C. [October 1, 2001 Report to the Legislature: ECPP Recommendations](#)